No. 96-1976

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

FLOR MARIA SOTO,

Petitioner,

—v.—

CARLOS FLORES, ISMAEL BETANCOURT y LEBRON, and JOHN DOES X, Y, and Z,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PUERTO RICAN BAR ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Puerto Rican Bar Association ("PRBA") is a nonpartisan, not-for-profit membership organization incorporated in 1957 under the laws of the State of New York. The membership consists of approximately 1,000 attorneys and law students, predominantly of Hispanic heritage, from the New York, New Jersey, and Connecticut area. One of the central missions of the PRBA is to comment on and, where necessary, to use legal mechanisms to protect against civil rights violations.

In June 1996, the PRBA formed the Domestic Violence Project (the "Project") to examine and address the issue of domestic violence fatalities, particularly as this tragedy affects the Hispanic community. Among its goals, the Project seeks to remedy violations of constitutionally protected rights of victims of domestic violence. Foremost among legal mechanisms available against state officials who abuse the power entrusted to them are the sanctions available under 42 U.S.C. § 1983.

This is the first time the PRBA appears before this Court as amicus to seek redress, under 42 U.S.C. § 1983, for violations of federal civil rights in the context of domestic violence.

STATEMENT OF THE CASE

The pertinent facts are fully set forth in the opinions of the United States Court for the District of Puerto Rico and the United States Court of Appeals for the First Circuit, and are summarized in Petitioner's Statement of the Case in her Petition for a Writ of Certiorari.

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[1] Letters of consent have been lodged with the Clerk of the Court pursuant to Rule 37.2

SUMMARY OF ARGUMENT

Combating the problem of domestic violence is at the forefront of the national agenda. Recent federal and state legislation and increased federal funding for law enforcement and community programs are just part of new and aggressive initiatives. New initiatives are particularly necessary where, as in our society, women are disproportionately affected by domestic violence and related fatalities. Amicus underscores the need for federal courts to carefully consider the overriding public policy issues, raised on a daily basis, by domestic violence crimes, and urges this Court to recognize and affirm the crucial role of § 1983 in ensuring effective enforcement of the constitutional rights implicated by affirmative interference with domestic violence law.

Sadly, this case illustrates that persistent and pernicious gender bias and discrimination against female victims by state enforcement officials remains a primary impediment to aggressive enforcement of domestic violence laws. Petitioner's children were viciously murdered by their father because of gender discrimination by state officials who affirmatively facilitated the egregious violation of statutory and constitutional rights presented by this case.

In seeking redress in the federal courts, Petitioner has been denied even the opportunity to "have her day in court," as the United States Court for the District of Puerto Rico erroneously imposed an incorrect and artificially high burden at the summary judgment stage, despite Petitioner's presentation of genuine, disputed issues of facts sufficient to state serious civil rights violations and to preclude summary judgment. Federal courts should not be allowed cavalierly to dispose of domestic violence cases as mere state "domestic relations" or criminal matters to be handled by local authorities. Domestic violence victims, such as Petitioner and her children, must be assured fair and appropriate access to federal remedies where, as here, state officials openly violate constitutionally protected rights.

I

DOMESTIC VIOLENCE CRIME IS A NATIONAL EPIDEMIC THAT APPROPRIATELY REQUIRES ASSISTANCE OF TRADITIONAL CIVIL RIGHTS FEDERAL REMEDIES TO REDRESS IMPROPER STATE LAW ENFORCEMENT AND GENDER DISCRIMINATION

A. Domestic Violence Crimes Disproportionately Affect Women Nationwide

For years, efforts effectively to address family violence -- or violence between intimates -- has been particularly difficult to implement. Traditional police responses have often proved ineffective.

Violence between intimates includes murders, rapes, robberies and assaults committed by spouses, ex-spouses, boyfriends or girlfriends. *See* U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Selected Findings, Violence Between Intimates: Domestic Violence*, NCJ 149259, November 1994 at 1. Grim statistics of family crimes and homicides highlight the extent of the problem. From 1987 to 1991, intimates committed an annual average of 621,015 rapes, robberies or assaults representing more than 13% of these crimes. *Id.* at 2.

It is undisputed that women are at much greater risk of harm from these crimes. For example, female victims of homicide were significantly more likely to be killed by a husband, ex-husband, or boyfriend. *See* Ronet Bachman, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Violence Against Women: Domestic Violence*, NCJ-154348, August 1995 at 4. In one 1992 study, approximately 28% of female victims of homicide were killed by their husband, ex-husband or boyfriend. *Id.* Compared to males, females experience over 10 times as many incidents of violence by an intimate. *See* Selected Findings, *Violence Between Intimates: Domestic Violence*, *supra* at 2. Annually, women

experience over 572,000 violence victimizations committed by an intimate, compared to approximately 49,000 incidents committed against men. *Id.*

Effective enforcement remains an issue of much debate and controversy, particularly as a result of deeply ingrained stereotypes and misconceptions about violence between intimates. These include myths that domestic violence is a family matter in which government officials should not interfere; that victims provoke incidents of domestic violence; and that female victims can easily leave these relationships. *Developments in the Law - Legal Responses to Domestic Violence,* 106 Harv. L. Rev. 1499, 1502-1503 (1993). Many of these gender stereotypes discredit and devalue women's experiences and testimony, and often serve to trivialize domestic violence in the legal arena. Women often encounter resistance from law enforcement personnel who minimize the danger of attacks on women by their partners, as demonstrated by officials' refusal to arrest and prosecute abusers. Jenny Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the U.S. Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 Colum. J. Gender & L. 80 (1995).

B. Federal and State Legislation Has Been Enacted to Address The National Domestic Violence Crisis

It is against this troubling backdrop that legislative reform and access to federal and state remedies have come to the forefront of national, state and local agendas. Legislators, the courts, law enforcement and family advocates are now working toward aggressive civil, criminal and community remedies and renewed enforcement.

Recent responses to domestic violence have been developed to protect victims and to eliminate negative social attitudes that continue to hurt female victims of domestic violence. New responses include legal reforms to civil and criminal laws, more aggressive arrest and prosecution policies, and new sentencing and treatment

programs. 106 Harv. L. Rev., *supra*, at 1530. States have strengthened stalking statutes and mandatory arrest policies; have enhanced police training procedures; and have instituted "no drop" prosecution policies. *Id.* at 1535 - 1542.

Puerto Rico's Domestic Violence Prevention and Intervention Law, P.R. Laws Ann. Tit. 8 § 601 (1991), commonly referred to as "Law 54," is considered a model statute because of its ambitious approach to aggressively curb domestic violence. The statute criminalizes a wide range of domestic violence and prescribes criminal and civil sanctions against the abuser. Rivera, *supra*, at 81. The Act also calls for preventive measures, such as increased education. *Id.* at 85. Although the statute has brought positive social and legal changes, its actual implementation has been hampered by controversy and criticism.

Review of the impact of Law 54 reveals that it has been the subject of affirmative resistance from law enforcement officials and politicians, particularly from those charged with overseeing its implementation. *Id.* at 83. By way of illustration, Law 54 calls for the Puerto Rico Commission on Women's Affairs (the "Commission") to oversee the Law's implementation by government officials and authorizes the Commission to direct implementation of key programs. *Id.* at 89. Various reports by the Commission to the Governor of Puerto Rico and the Legislature have underscored that law enforcement officials continue to resist the changes in legal and social culture that was contemplated by Law 54. Further, the Commission has concluded that patriarchal ideologies have affirmatively prevented successful criminalization of domestic violence. *Id.* at 91.

II

THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY SUMMARY JUDGMENT AND SUFFICIENCY OF PROOF REQUIREMENTS IN DOMESTIC VIOLENCE DISCRIMINATION CASES THAT IMPLICATE CONSTITUTIONALLY PROTECTED RIGHTS

A. Victims of Discrimination in Domestic Violence Cases Must Be Assured Access to Federal Courts

It is essential that the United States Supreme Court issue a writ of certiorari to ensure that victims of domestic violence are assured access to federal civil rights remedies where, as here, there is documented state-based resistance to local legislative mandates. It is similarly essential that crucial federal access and remedies not be summarily denied at the summary judgment phase on the basis of artificially high evidentiary burdens incorrectly imposed by the District Court and improvidently affirmed by the First Circuit Court of Appeals.

B. Petitioner Presents a Valid Claim Under 42 U.S.C. § 1983

The facts of this case present a sound basis for federal relief under § 1983 for the violation of Petitioner's equal protection and due process rights. This Court should grant certiorari to clarify the availability of § 1983 relief and to correct the erroneous standard used by the First Circuit in determining whether state action was actionable under 42 U.S.C. § 1983; whether improper gender discrimination motivated state actions; and whether summary judgment was properly granted.

Title 42 U.S.C. § 1983 provides a cause of action against "every person who, under color of any statute . . . of any State or Territory . . . subjects, or causes to be subjected any citizen . . . to the deprivation of any rights, privileges or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." 42 U.S.C. § 1983 (1997). "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). As recognized by this Court, "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

At the center of this case is the affirmative refusal and misapplication by state actors of Law 54 -- a law specifically enacted to address a longstanding failure to combat the widespread effects of domestic violence in Puerto Rico. Notwithstanding Law 54, police officials in Puerto Rico have affirmatively continued their resistance to proper enforcement of the law. The record shows that the First Circuit recognized the existence of evidence sufficient to create a triable issue of fact whether there existed a custom or policy of treating domestic abuse cases less seriously than other assault cases. The record also establishes a dearth of training of state and law officials in the proper implementation of Law 54. Pet. for Writ of Cert. at 6. *Soto v. Flores*, 103 F.3d 1056, 1066 (1st Cir. 1997). Additionally, the record contains evidence of disparate impact in that domestic violence victims are overwhelmingly women. Indeed, the record shows that police officials publicly denounced Law 54 as harmful and openly expressed discriminatory views of women. *Id.* This affirmative failure to enforce Law 54 has a demonstrable disparate impact on women and thus violates equal protection rights under the law.

But the uncontroverted facts show more than just a discriminatory failure to enforce the law. They show violations of due process as well. The Respondent police officials failed to protect Petitioner by failing to inform her of the availability of shelters and other forms of assistance and by failing to arrest her abusive spouse. Incredibly, the officers purposefully and affirmatively revealed to the

abuser Petitioner's police report -- even though they knew that he had threatened to kill Petitioner's family members if she reported his abuse to the police. *Soto*, 103 F.3d at 1060. The officers' actions affirmatively facilitated the abuser's threatened crime: he murdered Petitioner's children and then took his own life. *Id.* at 1061. Respondents' actions resulted in the loss of life and deprivation of constitutional rights.

The record is undisputed that Petitioner had approached the Respondent officers in their official capacity seeking aid and protection and trusting that they would keep her confidence -- as specifically mandated by Law 54. Instead, Respondents violated her confidence by notifying her abuser. Their affirmative and biased failure to abide by the prescriptions of Law 54 resulted in the loss of life under color of state law, depriving Ms. Soto and her children of their most fundamental statutory and federally protected constitutional rights.

In short, the record below establishes a failure to enforce and a deliberate violation of Law 54 by officials acting under color of state law -- all contrary to explicit legislative attempts to provide protective measures similar to those available to other crime victims.

C. Petitioner Was Denied Equal Protection Under the Law

The refusal to enforce Law 54 here resulted in the denial of equal protection that legislators enacting Law 54 sought to redress -- that is, to afford victims of domestic violence the same protection afforded to victims of other criminal behavior. The First Circuit, however, denied Petitioner's equal protection claim based on an erroneous standard of intent. *Id.* at 1067-68.

It is well settled that municipalities may be liable under the Equal Protection Clause of the Fourteenth Amendment in a federal action under § 1983 where police departments discriminate against victims of domestic violence by treating these crimes less seriously than non-domestic violence crimes. *See, Hynson v. City of Chester*, 864 F.2d 1026 (3d Cir. 1988); *Balistreri v. Pacifica Police Dep't*, 901

F.2d 696 (9th Cir. 1990); *Watson v. City of Kansas City*, 857 F.2d 690 (10th Cir. 1988).

The judgment of the First Circuit was incorrect and must therefore be reversed.

D. Petitioner Was Denied Due Process

Where, as here, officials operating under color of state law affirmatively act to create or to increase the danger to individual complainants, a cognizable due process claim exists. Indeed, this Court has acknowledged as much in *DeShaney v. Winnebago Dept. of Social Servs.*, 489 U.S. 189 (1989). There, this Court held that an affirmative act creating or increasing danger creates a cause of action under the Due Process Clause. *Id.*

Here, state officials acted in affirmative violation of the confidentiality provisions of Law 54, even while being fully aware of threats by Petitioner's husband to kill family members if she reported his abuse. Indeed, the court below acknowledged that police officials *created* the danger that resulted in the deaths of Petitioner's children, but refused to rule on Petitioner's due process claim. *Soto*, 103 F.3d at 1063-64.

To foreclose Petitioner's access to federal courts on the grounds set forth in the First Circuit's opinion is tantamount to cutting off § 1983 relief to domestic violence victims. Where, as here, there is clear evidence that a custom or policy of under-enforcement is motivated by gender bias, and where, as here, state officials created the danger that resulted in the loss of constitutional rights, § 1983 relief is available. Petitioner's procedural due process claims, however, were wholly ignored by the court below. As such, the District Court's dismissal and the First Circuit's affirmance of this case on summary judgment must be reversed and the case remanded with instructions to proceed on the due process claims.

III
THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE CONTOURS OF THE QUALIFIED IMMUNITY DOCTRINE

A. Respondents' Unconstitutional Behavior is Not Shielded by Qualified Immunity

The First Circuit disposed of the question based on an erroneous application of the qualified immunity doctrine. *Soto*, 103 F.3d at 1065. The First Circuit's application of the qualified immunity doctrine is erroneous and inconsistent with the long-stated goals of §1983. The qualified immunity doctrine balances our citizens' § 1983's interest in providing access to the federal courts for redress of state action that violates federally protected rights with the interest in efficient government operation. *Id.* at 1063-64.

As recognized by this Court: "When government officials abuse their offices, 'actions for damages may offer the only realistic avenue for vindication of constitutional guarantees.'" *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (*quoting Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982)). Whether a state official is liable for an unlawful official action turns on the "'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson*, 483 U.S. at 639 (*quoting Harlow*, 457 U.S. at 818-19). The qualified immunity doctrine is therefore limited to officials who act reasonably and in accordance with established law. By contrast, qualified immunity does not shield state actors from civil liability where, as here, their actions violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818.

B. Respondents' Unconstitutional Behavior Constituted State Created Danger Under Clearly Established Law

Qualified immunity is appropriate only where state officials act reasonably in light of established legal rules. *Anderson*, 483 U.S. at 639. The record plainly demonstrates that Respondents fell short of this standard. Pet. for Writ of Cert. at 16. Not only did Respondents fail to respond to Petitioner's complaint as required by Law 54, they affirmatively violated the law's confidentiality provisions while fully cognizant of her husband's threats of violence. They were, therefore, fully aware of the egregious nature of their actions.

It is not seriously disputed that Respondents were fully aware of the provisions of Law 54. The record shows that Respondents knew that Petitioner's husband had specifically threatened to kill her family members if she reported his abuse. Indeed, the officers involved were friends of the abuser. *Soto*, 103 F.3d at 1060. Undisputably, then, Respondents knew *first hand* that disclosure of Petitioner's complaint of abuse would result in violence. Under clearly established law at the time of their actions, Respondents reasonably should have known that their actions violated Law 54 and that § 1983 due process liability for violence and loss of life would be the result of their affirmative gender-biased actions. *See* Pet. for Writ of Cert. at 17.

The First Circuit determined that the state-created danger doctrine had not been clearly established because "in 1991 the First Circuit had not yet addressed the issue of state-created dangers." *Soto*, 103 F.3d at 1065.[2] This conclusion is inaccurate as a matter of law. As recognized by this Court, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in

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2 See Petition for Writ of Certiorari at 18 - 20 (discussion of First Circuit cases addressing the state-created danger doctrine prior to 1991).

question has previously been held unlawful . . . but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson*, 483 U.S. at 640. To state that as of April 1991, existing law made clear that state action depriving Petitioner of her statutory rights under Law 54 would violate § 1983 is to have a penchant for stating the obvious.

Similarly, the First Circuit's assertion that qualified immunity can be defeated only if the basis for the cause of action has been specifically addressed in the court hearing the case is erroneous. This construction of "clearly established" law would foreclose § 1983 relief for all claims, except those addressed in the particular court hearing the case, and in where there is no factual disagreement. Such construction provides police with absolute immunity for even the most blatant violations of the law. Under this interpretation, police officers lose immunity only where a court hearing has previously determined the question at hand and where there is no disagreement as to the interpretation of the law. Simply stated, this is legally incorrect and contrary to this Court's pronouncement in *Anderson*. *See* 483 U.S. at 640.

CONCLUSION

This Court should grant certiorari to clarify the availability of § 1983 remedies where state acts discriminate against victims of domestic violence in violation of constitutionally protected rights. Petitioner Soto has stated a valid claim for § 1983 relief based on Respondents' affirmative violation of the confidentiality provisions of Law 54 on the basis of her gender -- a violation that resulted in the murder of Petitioner's children. To foreclose a § 1983 claim at the summary judgment stage will doom legislative efforts to address this deeply rooted problem and will encourage similar, egregious

violations of our civil rights, dealing a harmful blow to efforts to enforce domestic violence laws and ignoring the purpose and intent of § 1983.

Dated: New York, New York
July 10, 1997

Respectfully Submitted,

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